## LAWSCAPE

# Gujarat riots point to need for police reform

HUMAN RIGHTS FEATURE

"WHERE the whole society has opted for a certain colour in [sic] a particular issue", admitted Ahmedabad Police Commissioner Prashant Chandra Pande to an interviewer from a web magazine, "it's very difficult to expect the policemen to be totally isolated and unaffected".

Mr Pande was defending the largely sectarian response of his police force, which has been charged with the task of putting down revenge killings by Hindus in the state of Gujarat. The killings began after a Muslim mob torched a train carrying Hindu activists returning from Ayodhya the northern Indian town where the Vishwa Hindu Parishad (VHP), a Hindu right-wing group, has laid claim to a piece of land on which a mosque previously stood. The VHP and its affiliated groups destroyed the mosque in 1992 in an attempt to construct a temple at the site.

This reasoning offered by an official of the rank of Police Commissioner indicates the extent to which sectarian prejudices have seeped into the police system. The bias shown by the police was ignored, and at times even endorsed, by a chauvinistic state government that took its time deploying the police, the Army and paramilitary forces, and which refused to entertain charges of inaction.

Members of the state administration, notably Gujarat Chief Minister Narendra Modi, sought to justify the raging violence with remarkable statements such as, in view of the Muslim attack on Hindus on the train entering Gujarat, the reaction of the Hindus was "understandable". The police force had not demonstrated bias, he claimed, adding that the state had not inhibited the police and Army from stepping in to control the violence. All in all, he concluded, the government had not erred, the rioting had been brought "under control", and the state administration should be commended for the "fact" that it had managed to control the spread of violence within three days.

That more than 500 people have died in the rioting so far has not appeared to stir a sense of accountability. As an elected representative in the world's second largest democracy, acceptance of responsibility was required and not simply for when the revenge attacks began but in the first instance when the train was set on fire at Godhra railway station. By all accounts, the mob had clearly been waiting for the train and was armed. The obviously volatile situation warranted a prompt dispatch of police personnel and preparations for follow-up action. No preventive action was taken.

The state administration was also either inexcusably unprepared for or, more likely, wilfully blind to the inevitability of retribution.

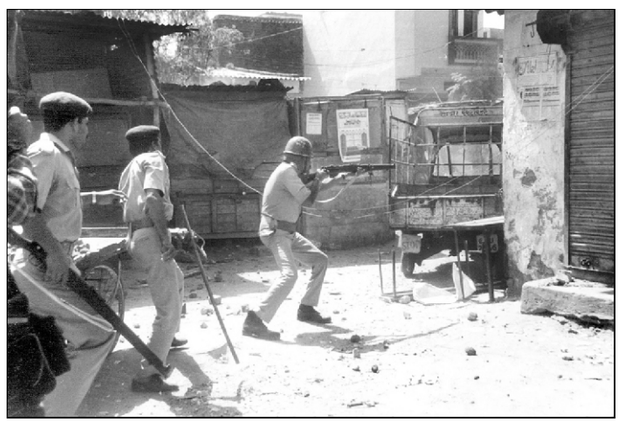
As people went on a rampage, setting fire to Muslim homes and business establishments, obstructing fire engines, and refusing to offer shelter to Muslim neighbours, the police in numerous instances either took no action, or reached the spot only after the damage had been done. The Army and paramilitary forces meanwhile stood by, waiting for deployment orders that came too late. In some cases, police officials claimed they had received instructions from state government officials not to intervene.

The handling of the riots in Gujarat bears a disturbing resemblance to police and State behaviour in previous communal riots. On 31 October 1984, armed mobs fell upon Delhi's Sikh community following Prime Minister Indira Gandhi's assassination by her Sikh bodyguards. The attacks began that same day. However, the Army was called out only the next evening. In its reply to an inquiry commission, the Army claimed that the government took too long to issue deployment orders. The Army affidavit also stated that it was deployed in the less affected southern and central districts of Delhi. The government, for its part, placed the onus on the Army. A (now-infamous) statement of the slain prime minister's son encapsulated the pervasive attitude within the government. "When a banyan tree falls," Rajiv Gandhi stated, "the earth is bound to tremble".

The State's abdication of its responsibility to protect minorities is demonstrated most clearly by the behaviour of its police. The sectarian bias of the Indian police as well as its politicisation is not a new phenomenon. The police force is regarded as the handmaiden of the political establishment, to be used to advance and protect the interests of the party in power.

Its sectarian approach also has a long history. As Vibhuti Narain Rai, former Inspector General (Border Security Force), now with the Uttar Pradesh state Police, noted in a 1999 article, communal overtones coloured police perceptions of citizens as well as the community's perception of the police as far as back as the pre-Partition days. A police officer, Hindu or Muslim, adds Rai, "continued to be looked upon primarily as a protector of his own community."

Rai undertook a study on police neutrality during communal riots, in which he found that the relationship between the police and Muslim citizens in most parts of the country was "inimical" and that "community perception of the police in situations of communal tension was that of an enemy". In most



**"Community perception of the police in situations of communal tension was that of an enemy. In most major communal riots in the country, Muslims suffered the most."**

major communal riots in the country, according to Rai's findings, Muslims suffered the most, "both in terms of life and property". Additionally, he found that "even in riots where the number of Muslims killed was *many times* more than the Hindus, it was they who were mainly arrested, most searches were conducted in their houses, and curfew imposed in a harsher manner in their localities. This observation holds good for even those riots where almost [all those] killed were Muslims" (emphasis in original).

Now, thanks to stubborn resistance to reform, the nation's consciousness has been marred by images of helpless citizens, under siege of their fellow countrymen, imploring the police to come to their aid.

More than half a century after Independence, the Police Act of 1861 -- an instrument of British colonial rule -- still regulates the operation of the Indian police force. The current public perception of the Indian Police Service is in large part due to the structure of the 1861 Act. Attempts were made by some NGOs to expedite the process of police reforms in India. These efforts, however, met with little cooperation from the government or the police force.

Policing in India consequently remains plagued by political interference, a lack of basic training, the virtual absence of accountability and a poor public image. Brutality has become endemic in police work. The general public believes that the police are more likely to harass them than help them, and therefore rarely seek police assistance. The police force, on the other hand, must contend with low pay, poor working and living conditions and high levels of stress.

On 15 November 1977, the Government of India's Ministry of Home Affairs appointed a National Police Commission (NPC) to examine all aspects of the Indian Police Service and to "re-define the role, duties, powers and responsibilities of the police". From 1979 to 1981, the NPC made numerous far-reaching and promising recommendations concerning the functions, procedures and perceptions of the police force in India and the Indian system of justice in general. The NPC produced a total of eight reports; the eighth and concluding report proposed a new Police Act to replace the Police Act of 1861. Now almost 20 years after the publication of the NPC's concluding report, the state of the Indian police remains as before. India's state and union governments show no signs of implementing any of the recommendations.

One of the most notable efforts to promote police reform was made by former Uttar Pradesh police chief Prakash Singh. In the case of *Prakash Singh vs Union of India* (writ petition 310 of 1996), Singh called on the government to implement the recommendations of the NPC and the National Human Rights Commission. Four specific issues were raised in the petition: (1) creation of a State Security Commission; (2) adoption of a fixed tenure for the police chief; (3) separation of the law and order and investigative branches of the police force; and (4) introduction of a new Police Bill.

In the *Prakash Singh* case, the Supreme Court ordered the Government of India to establish a Sub-Committee, headed by Julio Ribeiro, to examine the main themes of NPC's recommendations. The terms of the Sub-Committee were detailed in MHA Memo No. 11018/1/98-PMA dated 25 May 1998. Some NGOs worked with the committee to review and perfect the NPC recommendations. Four years after the formation of the Ribeiro Committee, however, no tangible results are in sight. The Supreme Court, having completed its hearings on the petition over a year-and-a-half ago, has reserved its judgement.

Hard questions need to be asked in the wake of the Gujarat tragedy: hard questions about the character and future of a democracy that permits the blatant and consistent disregard of the rule of law by its own law enforcement agencies. Serious consideration must be given to the NPC reports and recommendations this is a seemingly obvious point of departure, but one that has surprisingly found no mention either in government circles or in the media. It would constitute the first step toward the reconceptualisation of the Indian police as a protective force that can be relied on and expected to provide safety to persons under threat, regardless of their religious status or political preferences. To have a citizen plead with the police to come and save his life is a disgrace to the democratic culture that Indians lay claim to.

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## LAW watch

# Royal Dutch and Shell to face Nigeria human rights lawsuit

A human rights lawsuit against Royal Dutch Petroleum Co and Shell Trading and Transport Co's activities in Nigeria can go forward, according to a ruling by the US District Court for the Southern District of New York.

Judge Kimba Wood's ruling has determined that the case, which is being brought by EarthRights International and other parties, can now go forward to the so-called discovery phase where the parties can attempt to seek a settlement agreement prior to the case proceeding to trial. No date has yet been set for the discovery hearing.

Shell could not be reached for comment at the time of reporting, but a spokesman for EarthRights International said that the oil major cannot appeal the ruling at this stage.

The case alleges that Shell, operating directly and through Shell Nigeria, recruited the Nigerian police and military during the mid-1990s to suppress the Movement for the Survival of the Ogoni People (MOSOP) to ensure that Shell Nigeria's development activities could proceed as usual.


Judge Wood's ruling, which was received by the plaintiffs yesterday, will also allow similar claims to be brought against Brian Anderson, the former head of Shell's Nigerian subsidiary.

"This ruling means that the families of Ken Saro-Wiwa (MOSOP's leader) and his Ogoni colleagues may yet get some measure of justice for the unlawful executions and other abuses in which Shell was complicit," said Richard Herz, an attorney with EarthRights International.

Nigerian environmentalist and writer Ken Saro-Wiwa, youth leader John Kpuinen and seven other Ogoni activists were hanged by the Nigeria government in Nov 1995.

The nine activists had opposed Shell's oil development in the Niger Delta. The plaintiffs are represented by the New York-based Center for Constitutional Rights, EarthRights International, and Seattle University law professors Julie Shapiro, and Paul Hoffman.

Source: AFX News

# U.S. expected to regain seat on U.N. human rights panel

EDITH M. LEDERER

The United States is expected to regain the seat it lost last year on the U.N. Human Rights Commission, reversing a humiliating defeat that exacerbated already tense relations between the United Nations and the Bush administration.

Two rivals from the European Union, Italy and Spain, pulled out of the running for seats on the commission this week, and Western diplomats said the United States announced its candidacy on 13 March for what is now an uncontested seat on the top U.N. human rights body.

Last May, the United States lost the seat it had held since the commission was established in 1947. The ouster caused an outcry in Washington and led to intense behind-the-scenes lobbying by the Bush administration to get back on the panel. "I am pleased that the European Union has done the right thing and restored the integrity of the U.N. Human Rights Commission by clearing the way for the world's leading force for democracy," said U.S. Rep. Tom Lantos of California, the ranking Democrat on the House International Relations Committee. "I applaud especially the Italians and Spaniards for withdrawing their candidates to ensure a clean slate."

The vote that ousted the United States came amid widespread accusa-

tions that the Bush administration was slighting the United Nations and pursuing an increasingly unilateralist stance - rejecting U.N. treaties and planning to build a national missile defense system regardless of concerns abroad.

Lantos said unseating the United States "only eased the pressure on human rights violators and damaged the credibility of the commission." "It also created a crisis in the effort to restore normal relations between the United States and the U.N.," Lantos said. The withdrawal of Italy and Spain as candidates "will ensure no further damage is done," he said.

The Human Rights Commission makes studies and recommendations for the protection and promotion of human rights, either on its own initiative or at the request of the General Assembly or the Security Council. Under U.N. rules, regional groups decide who fills seats on U.N. bodies. The United States is one of 29 countries in the West European and Others Group, known as WEOG.

Last year, the United States was one of four candidates for three WEOG seats on the Human Rights Commission. In a secret ballot by the 54 nations on the U.N. Economic and Social Council, the commission's parent body, France, Austria and Sweden won seats and the United States suffered a stunning loss.

This year, WEOG asked Iceland's U.N. Ambassador Thorsteinn Ingolfsson to try to find a long-term solution for an uncontested rotation of seats on the commission among the group's members. His initial formula, which would have given every member a seat over 20 years, was rejected by some countries that felt they were being short-changed.

Intensive behind-the-scenes lobbying then began to get the United States back on the commission this year, without the need for another election. Australia, Ireland, Germany, Spain and Italy had announced their candidacies for four seats on the commission, to be decided in late April.

Ingolfsson said Spain notified WEOG on Monday that it was withdrawing from this year's race and Italy followed on Tuesday. A Western diplomat called it a friendly and constructive gesture from Rome and Madrid toward Washington.

With two of the five candidates now out of the race, Ingolfsson said there was a spot for the United States to announce its candidacy for the fourth seat - and a Western diplomat said it did so late Wednesday.

Since there will now be four candidates for four seats, no election is needed, and the United States, Australia, Ireland and Germany will join the commission. However, Ingolfsson said a meeting would probably be necessary to formalize the candidacies.



## HUMAN RIGHTS monitor

State of Human Rights II

# Country Report on Human Rights Practices in Bangladesh - 2001

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

THE Government continued to arrest and to detain persons arbitrarily, as well as to use national security legislation (the Special Powers Act (SPA) and Public Safety Act (PSA)) to detain citizens without formal charges or specific complaints being filed against them. The Constitution states that each person arrested shall be informed of the grounds for detention, provided access to a lawyer of his choice, brought before a magistrate within 24 hours, and freed unless the magistrate authorizes continued detention. However, the Constitution specifically allows preventive detention, with specified safeguards, outside these requirements. In practice authorities frequently violate these constitutional provisions, even in non preventive detention cases. In an April 1999 ruling, a two-judge High Court panel criticized the police force for rampant abuse of detention laws and powers. There is a system of bail for criminal offenses.

Under Section 54 of the Code of Criminal Procedure, individuals may be detained for suspicion of criminal activity without an order from a magistrate or a warrant. Some persons initially detained under Section 54 subsequently are charged with a crime, while others are released without any charge. According to one human rights organization, a total of 755 persons had been newly detained under the SPA between January and June. Another human rights organization, quoting prison authorities, cites the number of SPA detainees at 655 as of July 1. In the past, the Government sometimes used Section 54 to harass and intimidate members of the political opposition and their families. Police sometimes detain opposition activists prior to and during general strikes without citing any legal authority, holding them until the event is over. Newspapers report instances of police detaining persons to extract money or for personal vengeance.

According to a September 2000 study carried out by a parliamentary subcommittee, 98.8% of the 69,010 SPA detainees over a period of 26 years were released on orders from the High Court. The study asserted that SPA cases generally are so weak and vague that the court had no alternative but to grant bail.

In response to a deteriorating law and order situation, Parliament passed the restrictive new PSA in January 2000. The law established special tribunals to hear cases under the act, and made particular offences non-bailable. Opposition leaders expressed fears that the law would be used to arrest political opponents of the ruling party, as the law, like the SPA, allows police to circumvent normal procedures designed to prevent arbitrary arrest, and precludes detainees from being released on bail, which often is the result of arrests based on little or no concrete evidence.

Morshed Khan, a wealthy BNP leader who in 2000 was accused under the PSA of stealing money from a sweet shop, challenged the constitutionality of the PSA. In July the High Court issued a split verdict: One judge ruled the Public Safety Act unconstitutional; a second judge ruled that only parts of the Act were unconstitutional. The case will go before a third High Court judge who will resolve the differences between the two rulings; his ruling was pending at year's end. (Morshed subsequently became Foreign Minister in the BNP Government.). On November 22, Shariar Kabir was detained by the Special Branch of police at the immigration desk of Zia International Airport. Upon his return from Calcutta, Kabir was held without charge for 2 days before the Government announced that he had been arrested on the charge on carrying out seditious acts abroad.

Prisons often are used to provide "safe custody" for women who are victims of rapes or domestic violence (see Sections 1.c. and 5). As of July 1, 258 women and 97 children were in safe custody throughout the country. Of the 14 women and 4 children who remained in safe custody as of July 31, 8 have been locked up since last year. They share facilities with persons imprisoned for criminal offenses. While women initially may consent to this arrangement, it often is difficult for them later to obtain their release, or to gain access to family or lawyers.

The court system suffers from an overwhelming backlog of cases, which produces long pre trial delays. According to research by one human rights organization, most prison inmates never have been convicted and are awaiting trial. The Government explains that many convicted persons who are appealing their cases sometimes mistakenly are counted as pre trial detainees. Government sources report that the period between detention and trial averages 6 months, but press and human rights groups report instances of pre trial detention lasting several years. Trials often are characterized by lengthy adjournments, which considerably prolong the incarceration of accused persons who do not receive bail. One human rights organization asserted that the average time in detention before either conviction or acquittal is in the range of 4 to 7 years.

According to a newspaper report, Abdul Quddus of Kishoreganj, remained in prison after 9 years as an accused in a robbery case. Although the court set dates for hearings 69 times, the plaintiff did not appear. The court issued an arrest warrant against the plaintiff, but police did not arrest him. The court has the authority to dismiss the case, but unless a lawyer representing the accused requests dismissal, the court is unlikely to do it.

Nearly 6 years after completing a 2-month jail term for using an invalid passport, Goddi Ochendo, a Nigerian citizen, was finally released on February 17 after intervention by the High Court in response to a newspaper report. On May 22, the High Court ordered the release of 29 foreigners who had not been released after completing their jail terms.

Citizens who are not political opponents sometimes also are detained arbitrarily. Newspapers and human rights activists report numerous cases in which a person is arrested in order to force family members to pay for his or her release. Most persons detained under the SPA ultimately are released without charges being brought to.

The Government sometimes uses serial detentions to prevent the release of political activists. Jatiya Party Chairman Ershad was detained under the SPA in March after the court ordered his release upon payment of a fine in a corruption case. Maulana Azizul Haq, Chairman of the Islami Oikkyo Jote, a member of the four-party alliance, was rearrested inside prison in another case after the court granted him bail.

Numerous court cases have been filed against opposition M.P.'s and activists, on charges ranging from corruption to murder. Obaidur Rahman, a BNP M.P., and two other political figures were arrested in October 1998 for alleged complicity in the 1975 "jail killings" of four senior Awami League leaders; he was released on bail in December. The Government continued

**In one Dhaka constituency, Awami League M.P. Haji Selim has set up his own "alternate judicial system." Selim issues notices and brings alleged criminals to his home, where he has established his own "court" and appointed five "judges." If the accused does not surrender, Selim's men seal his house, often with family members inside. In a June 14 newspaper interview, Selim proclaimed his success in addressing the law and order situation, stating that, "It takes iron to cut iron."**

to hold eight persons accused of perpetrating these murders. The trial began on April 12.

Some opposition activists were detained or charged in questionable cases. On June 18, 11 members of the Jamaat-e-Islami were arrested under the SPA for preventive detention after meeting with a foreign NGO, the National Democratic Institute (NDI), to discuss training for election polling agents. NDI had held virtually the same meeting with each of the major political parties.

It is difficult to estimate the total number of detentions for political reasons. In some instances criminal charges may apply to the actions of activists, and many criminals claim political affiliations. Because of crowded court dockets and magistrates who are reluctant to challenge the Government, the judicial system does not deal effectively with criminal cases that may be political in origin. There is no independent body with the authority and ability to monitor detentions, or to prevent, detect, or publicize cases of political harassment.

### Denial of fair public trial

The Constitution provides for an independent judiciary; however, under a longstanding "temporary" provision of the Constitution, the lower courts remain part of the executive and are subject to its influence. The higher levels of the judiciary display a significant degree of independence and often rule against the Government in criminal, civil, and even politically controversial cases; however, lower level courts are more susceptible to pressure from the executive branch. There also is corruption within the legal process, especially at lower levels.

The court system has two levels: The lower courts and the Supreme Court. Both hear civil and criminal cases. The lower courts consist of magistrates, who are part of the executive branch of government, and session and district judges, who belong to the judicial branch. On June 21, the Supreme Court reconfirmed an earlier 12-point ruling regarding the procedures for a 1997 High Court order to separate the judiciary from the executive. The 12-point ruling declared which elements of the 1997 order could be implemented without requiring a constitutional amendment. The Supreme Court ordered the Government to implement those elements within 8 weeks. On August 5, Ishtiaq Ahmed, law advisor to the caretaker Government, announced that the judiciary would be separated from the executive by promulgating an ordinance. The Supreme Court is divided into two sections, the High Court and the Appellate Court. The High Court hears original cases and reviews cases from the lower courts. The Appellate Court has jurisdiction to hear appeals of judgements, decrees, orders, or sentences of the High Court. Rulings of the Appellate Court are binding on all other courts.

Due to the judicial system's million-case backlog, the Ministry of Law initiated a pilot program in Comilla offering Alternative Dispute Resolution (ADR) in some civil cases, whereby citizens have the opportunity to have their cases mediated by persons with a background in law before filing their cases. According to Government sources, the pilot program has been very successful, and is popular among citizens in the area. This program also has been implemented in Dhaka and Chittagong.

Trials are public. The law provides the accused with the right to be represented by counsel, to review accusatory material, to call witnesses, and to appeal verdicts. State-funded defense attorneys rarely are provided, and there are few legal aid programs to offer financial assistance. In rural areas, individuals often do not receive legal representation. In urban areas, legal counsel generally is available if individuals can afford the expense. However, sometimes detainees and suspects on police remand are denied access to legal counsel. Trials conducted under the SPA, the PSA, and the Women and Children Repression Prevention Act are similar to normal trials, but are tried without the lengthy adjournments typical in other cases. Under the provisions of the PSA and the Women and Children Repression Prevention Act, special tribunals hear cases and issue verdicts. Cases under these laws must be investigated and tried within specific time limits, although the law is unclear as to the disposition of the case if it is not finished before the time limit elapses.

Persons may be tried in absentia, although this rarely is done. Thirteen of the 21 persons accused in the 1975 "jail killing" case are being tried in absentia, and 8 of those convicted of killing Sheikh Mujibur Rahman and 21 members of his family were convicted in absentia in 1998. There is no automatic right to a retrial if a person convicted in absentia later returns. Absent defendants may be represented by state-appointed counsel, but may not choose their own attorneys, and, if convicted, may not file appeals until they return to the country.

A major problem of the court system is the overwhelming backlog of cases, and trials underway typically are marked by extended continuances while many accused persons remain in prison. These conditions, and the corruption encountered in the judicial process, effectively prevent many persons from obtaining a fair trial or justice.

According to one independent survey conducted by Transparency International Bangladesh, more than 60 percent of the persons involved in court cases paid bribes to court officials.

On August 22, Idris Ali was released after serving 5 years in prison in a case of mistaken identity. The High Court ordered his release on three separate occasions, but the orders did not reach the jail authorities. Idris' lawyer stated that "without paying a bribe at each and every level, no document reaches its destination in the judicial system. Even if the documents reach their destination, the victims do not get released without paying bribes." Finally the High Court delivered Idris' release order via private courier, and he was released. Because of the difficulty in accessing the courts and because litigation is time consuming, alternative dispute resolution by traditional village leaders, which is regarded by some persons to be more transparent and swift, is popular in rural communities. However, these mechanisms also can be subject to abuse.

In one Dhaka constituency, Awami League M.P. Haji Selim has set up his own "alternate judicial system." Selim issues notices and brings alleged criminals to his home, where he has established his own "court" and appointed five "judges." If the accused does not surrender, Selim's men seal his house, often with family members inside. In a June 14 newspaper interview, Selim proclaimed his success in addressing the law and order situation, stating that, "It takes iron to cut iron." Selim admits to publicly ordering his men to beat terrorists, extortionists, and muggers to death. He states that he wants "at least one dead body per year...[he does] not understand human rights." Selim claims that on some occasions, after his men have beaten up violent criminals, the criminals have returned and he has engaged them in productive employment. Selim lost his seat in the October 1 election.

The Awami League Government stated that it held no political prisoners, but the BNP and human rights monitors claim that many opposition activists were arrested and convicted under criminal charges as a pretext for their political activities. It is not clear how many such prisoners actually are being held. Soon after assuming power in mid-July, the caretaker Government formed a judicial commission to review cases of political prisoners and detentions under the SPA. The commission recommended that some cases be brought to trial and others dismissed.

TO BE CONTINUED